

Message Text

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FM SECSTATE WASHDC

TO AMEMBASSY MOSCOW

AMEMBASSY BUDAPEST

INFO AMEMBASSY WARSAW

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AMEMBASSY BELGRADE

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E.O. 11652: N/A

TAGS: EFIN

SUBJECT:LEGAL LENDING ON U.S. PRIVATE BANK CREDITS TO USSR

REFS: A) MOSCOW 13969 (1975) B) BUDAPEST 266

1. FOLLOWING IS RESPONSE TO MOSCOW'S REF A. HUNGARIAN
INQUIRY CONVEYED IN REF B IS PROBABLY BASED ON SAME LEGAL
LENDING LIMIT CONCERN. THERE HAS BEEN NO "REPORT" BY THE
COMPTROLLER ON THIS SUBJECT

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2. QUALIFYING FTO'S AS SEPARATE BORROWERS FOR LEGAL LENDING PURPOSES IN MANNER OUTLINED IN REFTEL WOULD BE PERMISSABLE UNDER NEW YORK STATE BANKING AUTHORITY REGULATIONS. ANOTHER METHOD OF EXPANDING FUNDS AVAILABLE WITHIN NEW YORK STATE LEGAL LENDING LIMIT IS HAVING SOVIET GOVERNMENT GIVE "FULL FAITH AND CREDIT" GUARANTEE, SUCH AS ONE GIVEN TO EXIMBANK. LOANS THEN WOULD BE CONSIDERED GOING TO GOVERNMENT BORROWER INSTEAD OF COMMERCIAL BORROWER. NEW YORK STATE BANKS HAVE LEGAL LENDING LIMIT OF 25 PERCENT OF CAPITALIZATION AND SURPLUS FOR GOVERNMENT BORROWERS INSTEAD OF NORMAL 10 PERCENT LIMIT FOR COMMERCIAL BORROWERS. MAJOR NEW YORK STATE BANKS DEALING WITH SOVIET UNION ARE MANUFACTURERS HANOVER TRUST, MORGAN GUARANTY,

BANKERS TRUST, CHEMICAL AND MARINE MIDLAND. WHILE STATE BANKS THAT ARE MEMBERS OF THE FEDERAL RESERVE SYSTEM ARE SUBJECT TO FED EXAMINATION, THE FED WOULD ACCEPT THE LENDING LIMITS OF NEW YORK STATE LAW.

3. TREATING FTO'S AS SEPARATE BORROWERS, HOWEVER, MIGHT NOT BE PERMISSABLE UNDER FEDERAL REGULATIONS APPLICABLE TO NATIONAL BANKS. THE COMPTROLLER OF THE CURRENCY'S OFFICIAL POSITION ON THIS ISSUE WAS CONVEYED TO THE USSR IN A JUNE 24, 1973 LETTER FROM FORMER SECRETARY OF THE TREASURY GEORGE SHULTZ TO THE MINISTER FOR FOREIGN TRADE NIKOLAI PATOLICHEV. THE RELEVANT PORTION OF THIS LETTER READS: "THE LENDING LIMIT CONTAINED IN SECTION 84 OF TITLE 12 OF THE UNITED STATES CODE WILL NOT REQUIRE THAT ALL LOANS AND CREDITS TO USSR ENTITIES BE COMBINED AND TREATED AS A SINGLE LOAN. WHEREVER IT CAN BE ESTABLISHED THAT A BORROWING ENTITY HAS A SEPARATE LEGAL AND ACCOUNTING STATUS AND INDEPENDENT SOURCES OF FUNDS WITH WHICH TO REPAY ITS DEBTS, SUCH ENTITY MAY BE CONSIDERED ELIGIBLE FOR A SEPARATE LINE OF CREDIT." SOME U.S. NATIONAL BANKS SEEM TO BE UNDER THE IMPRESSION THAT ALL LOANS TO FTOS ARE TO BE CONSIDERED JOINTLY IN CALCULATING THE TEN PERCENT CEILING. HOWEVER, THE COMPTROLLER HAS NOT BEEN ASKED TO RULE ON ANY SPECIFIC TRANSACTION AND THEY MAINTAIN THAT ANY RULING MUST BE BASED ON A CASE-BY-CASE ANALYSIS. ANY CLARIFYING GUIDELIMITED OFFICIAL USE

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LINES WOULD PROBABLY RESULT FROM A CASE-BY-CASE ANALYSIS.

4. IT IS NOT POSSIBLE TO INCREASE A NATIONAL BANK'S TEN PERCENT LENDING LIMIT TO AN FTO VIA A SOVIET GOVERNMENT GUARANTEE. UNLIKE NEW YORK LAW, FEDERAL REGULATIONS DO NOT PROVIDE FOR A HIGHER LENDING LIMIT TO A FOREIGN GOVERNMENT. MAJOR FEDERALLY CHARTERED NATIONAL BANKS DEALING WITH THE USSR ARE CHASE MANHATTAN BANK, FIRST

NATIONAL CITY BANK, AND BANK OF AMERICA.

5. SEVERAL BANKS HAVE INFORMED COMMERCE DEPT. BEWT/TDAD THAT SIMILAR PROMISSORY NOTE METHOD OF PAYMENT TO BANKS HAS BEEN USED IN NUMEROUS TRANSACTIONS WITH SOVIET UNION AND EASTERN EUROPE. SUCH ARRANGEMENT WAS USED ON THE FIRST COPPER DEVELOPMENT LOAN TO POLAND IN WHICH BORROWER WAS COPPER PRODUCERS ASSOCIATION WITH A GUARANTEE FROM BANK HANDLOWY. BEWT/TDAD WILL ATTEMPT TO GET MORE DETAILED INFORMATION ON OTHER TRANSACTIONS. KISSINGER

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